

**Before the New Hampshire
Occupational Therapy Governing Board
Concord, New Hampshire 03301**

COPY

**In Re: Diann David, OTR/L
(Formerly Known As Diann Capuchino, OTR/L)
(Misconduct Allegations)**

SETTLEMENT AGREEMENT

The New Hampshire Board of Allied Health Professionals, Occupational Therapy Governing Board ("the Board") is investigating allegations that Diann David, OTR/L (formerly known as Diann Capuchino, OTR/L) ("Ms. David" or "the Licensee") of Manchester, New Hampshire, has engaged in professional misconduct within the meaning of RSA 328-F:23, IV concerning certain actions claimed to have been taken by her between March 9, 1998 and May 12, 1998. It is alleged that Ms. David, in the course of rendering occupational therapy to Sr. Rita Rochon ("Sr. Rita" or "the client") during that time period, failed to use objectivity in her assessments, failed to appropriately assess the client's cognitive status, failed to render adequate and appropriate occupational therapy, failed to document a home visit conducted on April 8, 1998, failed to adequately collaborate with other treatment providers, and interfered with the client's discharge and long term care plans.

The Board is authorized by RSA 328-F:25, VIII, RSA 541-A:37 and RSA 541-A:38 to settle misconduct allegations by entering into settlement agreements.

Because the Licensee has cooperated, and because the Board and the Licensee both desire to avoid the delay, expense and effort involved in formal proceedings, the parties stipulate and agree to dispose of the misconduct allegations described above, in accordance

with the following terms and conditions:

1. The Board could institute a disciplinary proceeding against the Licensee pursuant to RSA 328-F:23, I, and if such a proceeding were commenced, the Licensee would be alleged to have violated RSA 328-F:23, IV (c), which prohibits behavior incompatible with the basic knowledge and competence of an occupational therapist, and RSA 328-F:23, IV (d), which prohibits unprofessional conduct within the occupational therapy profession. In addition, it would be alleged that the Licensee violated Med 709.01, the ethical standards governing an occupational therapist's conduct.

2. The Licensee stipulates that if a disciplinary hearing were to take place, Hearing Counsel would introduce evidence to demonstrate the following:

A. In early March, 1998, Sr. Rita Rochon was a patient at Holy Cross Health Center. Sr. Rita had been previously diagnosed with Alzheimer's disease, dementia, pneumonia, left lower lobe, diabetes mellitus (new onset), COPD (acute exacerbation), hypertension, osteoporosis, and depression.

B. On or about March 9, 1998, Sr. Rita's treating physician ordered occupational therapy.

C. At that time, Ms. David was working for RehabWorks, and provided occupational therapy services to Holy Cross Health Center through an independent contract arrangement. Ms. David was the occupational therapist assigned to work with Sr. Rita, and began providing occupational therapy services to Sr. Rita in April, 1998.

D. During the course of occupational therapy, Ms. David was to

collaborate with other treatment providers in establishing and carrying out a term of treatment. Ms. David failed to provide adequate information to other treatment providers regarding Sr. Rita's status, assessment, or plan for discharge, as well as failed to incorporate relevant problem areas as noted by other team providers.

E. Through occupational therapy, Ms. David was to instruct Sr. Rita regarding menu options and meal preparation. However, Ms. David provided Sr. Rita with only a limited range of options and skills.

F. Ms. David failed to recognize that Sr. Rita was not making functional gains or ongoing improvement in occupational therapy.

G. Sr. Rita's physical and mental ailments caused her to have decreased cognitive abilities. These decreased cognitive abilities were recognized by other treatment providers, but were not recognized by Ms. David during the course of her treatment of Sr. Rita.

H. As part of occupational therapy, Ms. David conducted a home visit at Villa Augustina, Sr. Rita's residence prior to hospitalization. The purpose of the home visit was to determine whether, in light of her presenting disabilities, the Villa was an appropriate location for Sr. Rita to live.

I. There is not any written report of Ms. David's findings and conclusions of the home visit. After the home visit, Ms. David verbally reported to Paula Demers, RN, Director of Nursing at Holy Cross Health Center, and Sr. Claire LeBreux, RJM, Local Superior at Villa Augustina. If this matter were to go to hearing, there would be testimony that Ms. David represented that the Villa was not an appropriate living

accommodation for Sr. Rita.

J. Despite Ms. David's assessment as verbalized to Ms. Demers and Sr. Claire, Ms. David continuously reassured Sr. Rita that she could return home to the Villa. Ms. David informed Sr. Rita that she "had rights" and that she had the right to return to her home at the Villa.

K. On or about April 24, 1998, Ms. David resigned from her position as Rehabilitation Director at Holy Cross Health Center.

L. On April 29, 1998, Sr. Rita was "missioned" to Holy Cross Health Center. This mission was supported in part by Ms. David's assessment of the home visit as verbally reported to Ms. Demers and Sr. Claire LeBreux.

M. On May 12, 1998, Ms. David delivered to Sr. Rita a letter in which she stated that from an occupational therapy perspective, Sr. Rita was capable of returning to the Villa or another facility which accommodates her level of independence and menu requirements.

N. As a result of the information provided to Sr. Rita by Ms. David, Sr. Rita had conflicting ideas regarding what her future status would or should be with respect to her living situation and long term care plans.

O. If a disciplinary hearing were to take place, the Respondent would introduce evidence to contradict part or all of Paragraphs D, E, F, G, I, J, L and N, herein.

3. The Licensee does not admit to any of the allegations, and expressly denies them.

4. The Licensee denies any other violations of RSA 328-F, the Allied Health Professionals Act.

5. The Board and the Licensee agree to the following terms of disciplinary action:

A. Within one year from the effective date of this Settlement Agreement, the Licensee shall obtain continuing education in the issues of care of Alzheimer's clients, cognition/aging of the brain, and collaboration with team members, in addition to the continuing education required for routine license renewal. This additional education shall consist of a minimum of fifteen (15) actual contact hours in attendance at professional workshops, seminars, and/or graduate level courses. The completion of this educational requirement shall be approved by the Board and shall take place within one year of the date of this Agreement. The Licensee shall provide written documentation or proof to the Board upon completion of the required courses within one year of the date of the Settlement Agreement.

B. Within thirty (30) days from the effective date of this Settlement Agreement, the Respondent shall submit to the Board the names of three (3) New Hampshire licensed occupational therapists who are willing and able to provide regular and effective clinical supervision as set forth below. The Supervisee shall have no social or professional association with the intended Supervisor that would impair the Supervisor's ability to perform in an evaluative role.

i. Commencing thirty (30) days from the date the Respondent receives notification from the Board of its approval of a Supervisor, and continuing for a period of not less than six (6) months, or longer if deemed necessary by the Supervisor, the Licensee shall engage, at her own expense, the services of the Supervisor for the purpose of conducting regular and effective clinical supervision. Supervision shall be required in all instances where the Respondent is providing occupational therapy services to clients or patients beyond a single evaluation.

ii. The Licensee shall provide the approved Supervisor a copy of this Settlement Agreement within ten (10) days of engaging the Supervisor. Supervision shall include the review of treatment plans and treatment modalities, and formal review of documentation and case notes (which the Licensee shall be required to maintain for every session for every client) for all current and future clients.

iii. Every case shall be reviewed at least once per month. The Supervisor shall not be changed without prior approval of the Board.

iv. The Supervisor shall file an initial non-public written report with the Board within forty-five (45) days of the commencement of supervision. The initial

report shall describe the Supervisor's contact with the Licensee in clinical and professional situations, identify each such contact by date, time and nature of contact; list the number of cases reviewed; describe the level of competency and performance observed; and include observations of the Licensee and those areas of practice where progress has been made and where further progress should be made.

v. Further written reports shall be filed with the Board every sixty (60) days thereafter during the period of supervision. The Supervisor shall notify the Board immediately if the Licensee discontinues supervision, fails to participate in good faith, or has plainly engaged in further professional misconduct.

vi. The Supervisor shall file a final written report with the Board at the completion of the supervision period. The final report shall indicate the Supervisor's assessment of the Licensee's ability to practice occupational therapy without further supervision.

vii. The Licensee shall be responsible for ensuring that all reports required by the terms of this Settlement Agreement are filed in a timely manner with the Board.

6. Failure to meet the above requirements shall constitute a separate and distinct cause for disciplinary action.

7. Except as provided in Paragraph 6, this Settlement Agreement shall forever bar further disciplinary or other adverse action by the Board based upon the specific allegations described above; provided, however, that this Settlement Agreement may be considered by the Board in determining whether the Licensee has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.

8. This Settlement Agreement shall take effect upon the date it is signed by the representative of the Board shown below.


9. The Licensee voluntarily signs this Settlement Agreement and states that no promises or representations have been made to her other than those terms and conditions

expressly stated herein.

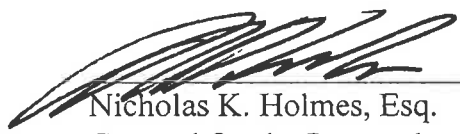
FOR THE LICENSEE

I, Diann David, OTR/L, formerly known as Diann Capuchino, OTR/L, have reviewed the foregoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being knowledgeable of all the consequences, agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and findings and conclusions with regard to the allegations which have been settled by the terms of this Settlement Agreement.

Date: 4/21/00



Diann David, OTR/L
Licensee

Date: 4/22/00


Nicholas K. Holmes, Esq.
Counsel for the Respondent

FOR THE BOARD*/

Date: 6/14/00


Authorized Representative of the
New Hampshire Occupational Therapy
Governing Board

*Linda Thyne, COTA, not participating.
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